IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 132 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAVANA GRAM PANCHAYAT

Versus

DISTRICT PANCHAYAT MEHSANA

Appearance:

MR YN RAVANI for Petitioner

MR SUNIL K SHAH for Respondent No. 1

MR BY MANKAD AGP for Respondent Nos. 2,3 and 4

MR SV PARMAR for Respondent No. 5

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 15/02/2000

ORAL JUDGEMENT

Respondent no.5 who is the resident of village Lavana, Tal. Chanasma, Dist. Mahesana applied for allotment of an open piece of Gamtal land (admeasuring 45' x 30') adjacent to his house in the village under Rule 43B of the Gujarat Revenue Rules, 1972. The Deputy

D.D.O. (Revenue) District Panchayat Mahesana by his order dt. 23-11-1992 rejected his application. It appears that the Panchayat had passed resolution with respect to the respondent no.5's application to the effect that the same may not be granted since the land was to be used for public purpose. The Deputy D.D.O. also referred to the letter of the Panchayat intimating respondent no.5 that he should not open the doors and windows abutting on the land and to the resolution passed by the Panchayat for closing the said windows and also to the notice given to the respondent no.5. It is clear that while rejecting the application of the respondent no.5, the Dy.D.D.O. had taken into consideration the objections raised by the Panchayat to the respondent no.5's application for allotment of land in question.

2. The respondent no.5 being aggrieved by the said of the Dy.D.D.O. rejecting his application preferred an appeal before the Collector, Mahesana under Sec. 203 of the Land Revenue Code. The Collector dismissed the same by his order dt.19th April, 1994. The Collector, while rejecting the said appeal by his order dt. 19th April, 1994, observed inter alia that the Gram Panchayat had not made recommendation for allotment of land to the respondent no.5. The respondent no.5 being aggrieved by the said order of the Collector, preferred revision application before the Secretary (Appeals), Revenue under Sec.211 of the Land Revenue Code. The Deputy Secretary (Appeals), Revenue who heard the said revision, allowed the same by his order dt. 27-10-1994 and ordered the land in question to be granted to the respondent no.5 under Rule 43-B of the Land Revenue Rules.

3. The Gram Panchayat, being aggrieved by the said order of the Deputy Secretary, Revenue, dt. 27-101994, has filed this petition under Art. 226 of the Constitution.

4. Learned counsel for the petitioner raised a number of contentions. He submitted that the land in question was proposed to be given to a Co-operative Society for the construction of a Godown as per Resolution No.112 dt. 30th March, 1991 passed by the Panchayat, as referred to in the order of the Collector. He submitted that respondent no.5 had illegally opened doors and windows abutting on the said land and notices had been given to him in that behalf. He contended that respondent no.5 had been guilty of suppression of facts. Next he contended that in the facts of the case, Rule 43-B of the Land Revenue Code was not attracted because the land was capable of being disposed as a separate

piece of land. He also contended that the Deputy Secretary has exceeded revisional jurisdiction under Sec.211 of the Land Revenue Code by interfering with the findings of fact recorded by the Deputy D.D.O. and the Collector. However, in my opinion, the main contention that requires to be considered is that the Deputy Secretary passed the impugned order without giving an opportunity of hearing to the petitioner Panchayat. It is clear from the order passed by the Deputy D.D.O. and the Collector that the objections raised by the Panchayat were taken into consideration while rejecting the application of the respondent no.5. In the circumstances, the learned counsel for the petitioner has rightly contended that the Panchayat should have been given an opportunity of hearing before the Deputy Secretary who heard the revision application. The petition, therefore, deserves to be allowed on this short ground alone. The learned counsel for the respondent No.5 also made submissions in answer to other contentions made on behalf of the petitioner. He contended that the Deputy Secretary, by his order dt. 27/10/1994, had found in favour of respondent no.5 after going through the record. He also submitted that subsequently, the Co-operative Society had withdrawn their claim. The learned counsel for the petitioner submitted that there is nothing on record to this effect. However it is in my opinion not necessary to go into the merits of the rival contentions since the petition is being allowed on the aforesaid short ground that the Deputy Secretary passed the order without affording an opportunity of hearing to the Gram Panchayat. Under the circumstances, the petition is allowed and the order passed by the Deputy Secretary dt. 27-10-1994 is set aside. The Secretary is directed to hear and dispose of the revision application afresh, after giving an opportunity of hearing to all the parties including the Gram Panchayat. He shall decide the matter asexpeditiously as possible, preferably within three months ofthe receipt of this order.Rule is made absolute accordingly, with no order as to costs. Interim reliefs granted earlier stand vacated.

Date : 15/2/2000. ------
ccshah